

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 98-159
FM Broadcast Stations.)	RM-9290
(Wallace, Idaho, and Bigfork, Montana))	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 29, 2004

Released: August 5, 2004

By the Commission:

1. Bee Broadcasting, Inc. ("Bee Broadcasting") seeks review of the *Memorandum Opinion and Order* in this proceeding.¹ Anderson Broadcasting Company ("Anderson Broadcasting") filed an Opposition to Application for Review. For the reasons discussed below, we deny review.

2. At the request of Alpine Broadcasting Limited Partnership ("Alpine Broadcasting"), former permittee of Station KSIL, Channel 264C, Wallace, Idaho, the *Report and Order* reallocated Channel 264C from Wallace, Idaho, to Bigfork, Montana, and modified the Station KSIL construction permit to specify operation on Channel 264C at Bigfork.² The request was filed pursuant to Section 1.420(i) of the rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest.³ The *Bigfork R&O* determined that the proposed reallocation would result in a preferential arrangement of allotments by providing a first local service to Bigfork and a net gain in service to 58,604 persons. The staff made this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ The staff *Memorandum Opinion and Order* denied a Petition for Reconsideration filed by Bee Broadcasting.

3. On review, Bee Broadcasting contends that the staff erred in not requiring Alpine Broadcasting to submit an engineering exhibit setting forth the populations that would gain and lose service as a result

¹ *Wallace, Idaho, and Bigfork, Montana*, 17 FCC Rcd 2243 (MMB 2002). Bee Broadcasting is the licensee of Station KDBR and Station KBBZ, Kalispell, Montana, Station KKMT, Columbia Falls, Montana, and Station KJJR, Whitefish, Montana.

² *Wallace, Idaho, and Bigfork, Montana*, 16 FCC Rcd 9591 (MMB 2002) ("*Bigfork R&O*"). Anderson Broadcasting is now the licensee of Station KSIL.

³ See *Modification of FM and TV Authorizations to Specify a New Community of License*, ("Community of License"), 4 FCC Rcd 4870 (1989); *recon. granted in part* 5 FCC Rcd 7094 (1990).

⁴ *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

of this proposal, and in permitting Station KSIL to “abandon” areas that receive only one other aural service. Bee Broadcasting also contends that the staff improperly reallocated a channel which is not in the FM Table of Allotments, and deprived the public of the opportunity to comment on this rulemaking proposal as modified. For the reasons discussed below, we conclude that each of these arguments is without merit.

4. The *Notice of Proposed Rule Making* requested that Alpine Broadcasting provide information regarding the areas and populations that would gain and lose service as a result of the proposed Channel 264C reallocation to Bigfork, Montana.⁵ In response to this request, Alpine Broadcasting submitted a gain and loss study premised on maximum facilities for the unbuilt Station KSIL Class C allotment at Wallace and proposed Class C allotment at Bigfork. Our policy is that coverage predictions for unbuilt Class C stations be determined assuming minimum facilities.⁶ Moreover, subsequent to the petitioner’s submission and prior to the *Bigfork R&O*, Station KSIL became licensed as a Class C2 facility.⁷ Thereafter, the staff undertook its own gain and loss study which determined that the reallocation proposal would result in a net service gain of 58,604 persons. The fact that Alpine Broadcasting did not amend its gain and loss submission to reflect licensed Class C2 facilities at Wallace and proposed minimum Class C facilities at Bigfork is not fatal to this proposal. We see no public interest benefit in dismissing this proposal when, on the basis of our own study, the actual net service gain represents a significant public interest benefit. As suggested by Bee Broadcasting, the staff could have, under these circumstances, issued a *Request for Supplemental Information* requesting a revised gain and loss study. However, such a study would have merely duplicated the staff analysis, and unnecessarily delayed resolution of this proceeding and the introduction of a first local service to Bigfork.

5. We recognize that the reallocation would result in 150 persons losing a second aural service. This is partially offset by the fact that this proposal would result in 55 persons receiving a first aural service. However, these population totals are *de minimis* and not of decisional significance in this proceeding.⁸ We also recognize that this reallocation would result in 19,094 persons losing service. This loss is more than offset by a net service gain of 58,604 persons, a first local service to Bigfork, and the fact that more than 75 percent of the population losing service would continue to receive five or more services.⁹

6. The staff action in this proceeding is not a departure from prior precedent. In *Wallace, Idaho and Lolo, Montana*, the staff denied a proposal to reallocate Channel 248C2 from Wallace, Idaho, to Lolo, Montana, and modify the Station KQWK construction permit to specify Lolo as its new community of license.¹⁰ Unlike this proceeding in which we considered the reallocation to Bigfork as a first local service, that action was premised on the fact that the reallocation to Lolo would not receive a preference as a first local service due its dependence upon and proximity to the Missoula Urbanized Area. In addition, favorable action on that proposal would have precluded a second reception service to 1,035 persons. In *Pecos and Wink, Texas*, the staff denied a proposal to reallocate Channel 247C1 from Pecos to Wink, Texas, and modify the unbuilt Station KKLY construction permit to specify Wink, Texas, as its

⁵ *Wallace, Idaho, and Bigfork, Montana*, 13 FCC Rcd 16278 (MMB 1998).

⁶ *See Greenup, Kentucky*, 6 FCC Rcd 1493 (1991).

⁷ File No. BLH-20001215AAZ, granted March 13, 2001.

⁸ *See Seabrook, Huntsville, Bryan, Victoria, Kenedy and George West, Texas*, 10 FCC Rcd 9360 (1995) (a second aural service to 455 persons considered to be *de minimis*).

⁹ *See Family Broadcasting Group*, 53 R.R. 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm’n Nov. 29, 1983) (areas receiving five or more services considered well served); *see also LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

¹⁰ *Wallace, Idaho, and Lolo, Montana*, 14 FCC Rcd 21110 (MMB 1999).

community of license.¹¹ The Wink reallocation was rejected because it would have resulted in 673 persons losing their only aural service. This loss of service was considered under FM allotment Priority 1. In evaluating that reallocation, the population gaining a second aural service was considered under FM allotment Priority 2 and a first local service at Wink was considered under FM allotment Priority 3. In contrast, the Bigfork reallocation would result in the loss of a second aural service to 150 persons under Priority 2 and the gain of a first local service to a community of 1,461 persons under Priority 3. The fact that these priorities are co-equal, coupled with a net gain in service to 58,604 persons, warrants favorable action on the proposal to reallocate Channel 264C to Bigfork, Montana.

7. Notwithstanding Bee Broadcasting's claims to the contrary, the public was afforded the opportunity to comment on the KSIL Class C2 downgrade application. The action licensing Station KSIL as a Class C2 facility is now final. A subsequent revision of the FM Table of Allotments to reflect a Class C2 allotment at Wallace is a ministerial action which does not require additional public comment. This proceeding requested public comment on the proposed Class C allotment at Bigfork.

8. We also reject as speculative the argument that either Anderson Broadcasting or Alpine Broadcasting used "gamesmanship" in downgrading the Wallace allotment to Class C2 in order to minimize the population total that will lose service and maximize the net population total that will gain service. This kind of claim should have been directed to the application downgrading the Station KSIL allotment. In any event, as noted by Alpine Broadcasting, the authorized transmitter site for the Channel 264C allotment at Wallace was located on Goose Peak, which is managed by the Shoshone County Sheriff's Department. In an earlier request for extension of the Station KSIL 264C construction permit at Wallace, Alpine Broadcasting stated that low power communication users at Goose Peak raised interference objections to the construction of a Class C facility. As a result, the Sheriff's Department would not allow Station KSIL to construct its Class C facility on Goose Peak. In view of the record before us concerning the unavailability of the Goose Peak transmitter site, there is no basis to conclude that the Station KSIL Class C2 downgrade was merely a means to achieve a reallocation to Bigfork.

9. Accordingly, IT IS ORDERED, That the aforementioned Application for Review filed by Bee Broadcasting, Inc. IS DENIED.

10. IT FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹ *Pecos and Wink, Texas*, 14 FCC Rcd 2840 (MMB 1999).